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7  
8 **BEFORE THE**  
**RESPIRATORY CARE BOARD**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. 1H 2007 014

11 DAVID P. SULLIVAN  
12 7722 N. Angus  
Apartment 232A  
13 Fresno CA 93720

**A C C U S A T I O N**

14 Respiratory Care Practitioner License No. 14123

15 Respondent.

16  
17 Complainant alleges:

18 PARTIES

19 1. Stephanie Nunez (Complainant) brings this Accusation solely in her  
20 official capacity as the Executive Officer of the Respiratory Care Board of California,  
21 Department of Consumer Affairs.

22 2. On or about February 27, 1991, the Respiratory Care Board issued  
23 Respiratory Care Practitioner License Number 14123 to David P. Sullivan (Respondent). The  
24 respiratory care practitioner license was in full force and effect at all times relevant to the charges  
25 brought herein and will expire on August 31, 2008, unless renewed.

26 JURISDICTION

27 3. This Accusation is brought before the Respiratory Care Board (Board),  
28 Department of Consumer Affairs, under the authority of the following laws. All section

references are to the Business and Professions Code unless otherwise indicated.

4. Section 3710 of the Code states: “The Respiratory Care Board of California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3, the Respiratory Care Practice Act].”

5. Section 3718 of the Code states: “The board shall issue, deny, suspend, and revoke licenses to practice respiratory care as provided in this chapter.”

6. Section 3750 of the Code states:

“The board may order the denial, suspension or revocation of, or the imposition of probationary conditions upon, a license issued under this chapter, for any of the following causes:

“(g) Conviction of a violation of any of the provisions of this chapter or of any provision of Division 2 (commencing with Section 500), or violating, or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of this chapter or of any provision of Division 2 (commencing with Section 500).”

7. Section 3755 of the Code states:

“The board may take action against any respiratory care practitioner who is charged with unprofessional conduct in administering, or attempting to administer, direct or indirect respiratory care. Unprofessional conduct includes, but is not limited to, repeated acts of clearly administering directly or indirectly inappropriate or unsafe respiratory care procedures, protocols, therapeutic regimens, or diagnostic testing or monitoring techniques, and violation of any provision of Section 3750. The board may determine unprofessional conduct involving any and all aspects of respiratory care performed by anyone licensed as a respiratory care practitioner.”

## COST RECOVERY

8. Section 3753.5, subdivision (a) of the Code states:

"In any order issued in resolution of a disciplinary proceeding before the board, the board or the administrative law judge may direct any practitioner or applicant found to have

1 committed a violation or violations of law to pay to the board a sum not to exceed the costs of the  
2 investigation and prosecution of the case."

3 9. Section 3753.7 of the Code states:

4 "For purposes of the Respiratory Care Practice Act, costs of prosecution shall  
5 include attorney general or other prosecuting attorney fees, expert witness fees, and other  
6 administrative, filing, and service fees."

7 10. Section 3753.1 of the Code states:

8 "(a) An administrative disciplinary decision imposing terms of probation may  
9 include, among other things, a requirement that the licensee-probationer pay the monetary costs  
10 associated with monitoring the probation. "

11 11. California Code of Regulations, title 16, section 1399.370, states:

12 "For the purposes of denial, suspension, or revocation of a license, a crime or act  
13 shall be considered to be substantially related to the qualifications, functions or duties of  
14 a respiratory care practitioner, if it evidences present or potential unfitness of a licensee to  
15 perform the functions authorized by his or her license or in a manner inconsistent with the  
16 public health, safety, or welfare. Such crimes or acts shall include but not be limited to  
17 those involving the following:

18 "(a) Violating or attempting to violate, directly or indirectly, or assisting or  
19 abetting the violation of or conspiring to violate any provision or term of the Act.

20 FIRST CAUSE FOR DISCIPLINE

21 (Unprofessional conduct)

22 12. Respondent is subject to disciplinary action under code sections 3750(g)  
23 and 3755 in that he was unable to perform his job duties as a respiratory therapist due to abuse of  
24 prescription medication. The circumstances are as follows:

25 13. On or about December 9, 2006, respondent was employed as a respiratory  
26 therapist at Saint Agnes Medical Center in Fresno, California. He reported to work at 0700  
27 hours, but had difficulty staying awake to receive report from the night shift therapist. Prior to  
28 0900 hours, a registered nurse reported that respondent was unable to assemble a ventilator to

1 prepare an intubation procedure for a patient. Respondent's supervisor set up the ventilator and  
2 helped place the patient on the appropriate equipment. When the supervisor asked respondent  
3 about his inability to assemble the equipment, respondent replied, "I'm just tired." The ventilator  
4 sounded an alarm, and respondent did not react. The supervisor stepped in and handled the  
5 ventilator, then asked respondent if he needed to go home. Respondent denied needing to leave  
6 work and stated again that he was tired. The supervisor noticed that respondent's speech was  
7 slurred and he appeared to drool.

8           14. At approximately 1100 hours, the RN charge nurse reported that  
9 respondent fell asleep while in the process of setting up a procedure for a patient. The relief  
10 supervisor observed that respondent was walking aimlessly around the unit and was unable to  
11 perform his job duties. Based on respondent's appearance, and his inability to perform patient  
12 care, respondent was relieved of his job duties. Respondent voluntarily agreed to be drug tested.

13           15. Based on the results of his drug test, respondent was sent to for a fitness  
14 for duty evaluation. Respondent stated that he had chronic back pain, and had been using  
15 prescription medications methadone, Xanax, and Valium. He also admitted that he drank "a  
16 couple of beers" every night. Respondent was diagnosed as dependent on opiates and sedatives,  
17 and as alcohol-dependent in partial remission. It was recommended that respondent attend  
18 detoxification and rehabilitation programs, and re-evaluation for pain management without the  
19 use of opiate medications.

20           16. Therefore, respondent's license is subject to discipline based on his misuse  
21 of prescription medications and inability to safely practice respiratory care, in violation of code  
22 section 3755.

### 23 PRAYER

24           WHEREFORE, Complainant requests that a hearing be held on the matters herein  
25 alleged, and that following the hearing, the Respiratory Care Board issue a decision:

26           1. Revoking or suspending Respiratory Care Practitioner License Number  
27 14123, issued to David P. Sullivan.

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1                   2.       Ordering David P. Sullivan to pay the Respiratory Care Board the costs of  
2 the investigation and enforcement of this case, and if placed on probation, the costs of probation  
3 monitoring;

4                   3.       Taking such other and further action as deemed necessary and proper.

5 DATED: January 14, 2008

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8                                   Original Signed by Liane Zimmerman for:  
9                                   STEPHANIE NUNEZ  
10                                  Executive Officer  
11                                  Respiratory Care Board of California  
12                                  Department of Consumer Affairs  
13                                  State of California  
14                                  Complainant

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